

divestcap

From: Bruce Hill [bruce@divestcap.com]
Sent: Friday, February 20, 2004 8:47 AM
To: Golan, Daniel
Cc: Vigder, Avi; charles@divestcap.com
Subject: LP Agreement
Attachments: Partnership (Clean) 2-19-04.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Danny,

Here is the revised LP agreement. The notice period in Section 3.1(a) has been changed to 45 days as discussed with Avi. Also, we added a new section ((Section 4.2(a)(v)) which Avi suggested. I would really appreciate it if you could send me the letters I sent you before, the W-8 BEN and just the signature page from the LP agreement by PDF today if possible. I am getting some tax advice on the precise wording of Section 4.2(a)(v).

Thanks,

Bruce

divestcap

From: charles@divestcap.com
Sent: Friday, March 05, 2004 6:26 PM
To: Bruce Hill; Vigder, Avi
Subject: FW:

Follow Up Flag: Follow up
Flag Status: Flagged

Platinum just executed a massive RIF of corporate, apparently as part of its transition to a full-fledged buyout fund structure. (Corporate had about 130 people - funding strictly from management fees allows somewhere under half that number).

This could be a big opportunity for us to pick up a NY sourcing guy with a lot of skill, process, and training. The person below just contacted me and sounds promising.

Avi - we could easily support this headcount addition out of FORTEL. You have been asking us to think about expansion. If we like this guy, would you support an add? If we like him - and we may not - I strongly believe we should do this. Please give me your thoughts. Thanks. Obviously, one consideration is space on floor 21.

Charlie

Charles C. Hill
DivestCap Management Corp.
660 Madison Avenue, Floor 21
New York, NY 10021
Mobile: 617 818 7222
NY Office: 212 651 9023
charles@divestcap.com

Visit DivestCap at:
www.divestcap.com

Growing Technology Divestitures with Knowledge & Capital

-----Original Message-----

From: Michelle Yi [mailto:michelle@divestcap.com]
Sent: Thursday, March 04, 2004 5:24 PM
To: charles@divestcap.com
Subject:

Charlie:

Some guy from Platinum called for your Nick Cuport (sp?) 646-279-3261. He said something about a Matt Sefay at Platinum. Don't know what it's regarding - just left me a VM.

Michelle

divestcap

From: charles@divestcap.com
Sent: Thursday, March 11, 2004 12:35 AM
To: Vigdor, Avi
Cc: Bruce Hill
Subject: RE:

Follow Up Flag: Follow up
Flag Status: Flagged

OK. Good. I won't lose him for that.

Charlie

Charles C. Hale
DivestCap Management Corp
660 Madison Avenue, Floor 21
New York, NY 10021
Mobile: 617 818 2222
NY Office: 212 653 9023
charles@divestcap.com

Visit DivestCap at:
www.divestcap.com

Growing Technology Divestitures with Knowledge & Capital

-----Original Message-----

From: Vigdor, Avi [mailto:Avi@sagecap.com]
Sent: Thursday, March 11, 2004 12:13 AM
To: charles@divestcap.com
Cc: Bruce Hill
Subject: RE:

sounds excellent.

we'll need to discuss our real estate needs, but definitely do not lose him because of space.

lets speak about it next week.

avi

-----Original Message-----

From: charles@divestcap.com [mailto:charles@divestcap.com]
Sent: 7/10/03/2004 20:19
To: Vigdor, Avi
Cc: Bruce Hill
Subject: RE:

Avi - our PinStream candidate is calling MACHINE. I like his personality a lot. And he'd be cheap for us (had a \$40-50k raise).

We have more pressing hiring needs, which we can discuss, but this could be a great opportunity.

The question is speed. Is a land grab for us to take over our 21st

floor location out of the question? We have big place but also don't want to screw our colleagues.

Charlie

Charles C. Hale
DivestCap Management Corp
660 Madison Avenue, Floor 21
New York, NY 10021
Mobile: 617 818 2222
NY Office: 212 691 9923
charles@divestcap.com

Visit DivestCap at:
www.divestcap.com

Growing Technology Divestitures with Knowledge & Capital

-----Original Message-----

From: Vigdor, Avi [mailto:Avi@divestcap.com]
Sent: Saturday, March 06, 2004 2:37 AM
To: charles@divestcap.com
Subject: RE:

I fully support when you interview him - please consider not only professional skills - but more importantly his personality and fit with you guys.

I will be in NY during the week of March 15 and I hope the 3 of us can meet.

----- Message d'origine -----

De: charles@divestcap.com [mailto:charles@divestcap.com]
Date: ven. 05/03/2004 18:26
A: Bruce HEP; Vigdor, Avi
Cc:
Objet: FW:

Platinum just executed a massive RIF at corporate, apparently as part of its transition to a full-fledged buyout fund structure. (Corporate had about 130 people - funding strictly from management fees allows somewhere under half that number).

This could be a big opportunity for us to pick up a NY sourcing guy with a lot of skill, process, and training. The person below just contacted me and sounds promising.

Avi - we could easily support this buyout addition out of NORTEL. You have been asking us to think about expansion. If we like this guy, would you support an add? If we like him - and we may not - I strongly believe we should do this. Please give me your thoughts. Thanks,

Obviously, our consideration is space on floor 21.

Charlie

Charles C. Hale

DivestCap Management Corp

660 Madison Avenue, Floor 21

New York, NY 10021

Mobile: 647 816 2222

NY Office: 212 681 9023

~~<mailto:charles@divestcap.com>~~ charles@divestcap.com

Visit DivestCap at:

~~<http://www.divestcap.com/>~~ www.divestcap.com

Growing Technology Divestitures with Knowledge & Capital

-----Original Message-----

From: Michelle Yi ms21@frankchelle.com

Sent: Thursday, March 04, 2006 5:24 PM

To: charles@divestcap.com

Subject:

Charlie:

Some guy from Platinum called for you: Nick Cooper (sp?) 646-279-3261.
He said something about a Matt Saffy at Platinum. Don't know what it's
regarding. Just let me a VM.

Michelle

divestcap

From: Bruce Hill [bruce@divestcap.com]
Sent: Tuesday, March 18, 2004 1:11 PM
To: Vigder, Avi
Cc: 'Charles Hale'
Subject: Last Version
Attachments: Term Sheet 3 June 02_.doc

Follow Up Flag: Follow up
Flag Status: Flagged

divestcap

From: charles@divestcap.com
Sent: Monday, April 19, 2004 3:34 PM
To: Vigder, Avi; Golan, Daniel
Cc: 'Bruce Hill'
Subject: RE: Summit Transaction and GP Ownership Distribution to Cavallo
Attachments: Team Partic (excerpt).xls

Follow Up Flag: Follow Up
Flag Status: Flagged

Avi,

The team wants to sell all the stock they own at a \$14mm valuation. I didn't think Guy would do this. You and Bruce were 100% right.

The attached spreadsheet allows one to model the cost of SDI Holdings LP buying any percent of their stock at any valuation (allowing you to play with the numbers if you like).

Bruce and I propose the following:

1. We let the team exercise its pro rata - eg 28.99% of their holdings - at a \$14mm valuation. This means they sell us 1,014,846 shares at 70 cents ea., costing us \$710,252 cumulatively. We could insist that they share transaction costs if we want, which would reduce the valuation somewhat. Since I don't have from you a calc of Gross versus Net proceeds, I haven't included these calcs.
2. We offer this deal on 1 condition: that failure to meet the Operating Targets of the 2004 Low Case budget trigger termination for cause, at our option, if we terminate. We propose this because it would let us terminate Guy for poor performance without having to pay severance. We'd have to have this payout, have him miss Q2, and then have to pay him severance. The Operating Targets are Bookings, Revenue, EBITDA, and Cash generation. There is a prohibition against deal acceleration to make plan, but and we would strengthen that to guard against desperate measures to make plan.

Finally, before we consent to this proposal, Bruce and I would each like to know where we come out on the actual net proceeds prior to this transaction. We've been told the gross profits were approx \$11.65mm and net profits \$11.4mm? Is that correct? At those levels and with this performance condition, we'd feel good about this proposal. Are we giving the team too much or being too harsh?

Charlie

Red = Input

Data

Valuation - Sale to Team	\$14,000,000
Price Per Share	\$0.70
% Team Ownership	17.500%
% SDI Sold in BSL Deal	28.990%

Assumptions

% We Let Team Sell (% of their shares)	28.990%
--	---------

Team Member	Total Team Shares	Team Pro Rate Sale (Shares)	Proceeds to Team & Cost to Saga

Buy	1,889,899	579,798	\$405,858
Other	1,500,000	434,875	\$304,394
TOTAL			\$710,252

Nominal Sale Price, Inclusive of USL Gain \$8,000,000
 Percent of Price 7.9%

Estimated Actual Net Proceeds, Inclusive of USL Gain \$11,400,000
 Percent of Price 6.2%

Charles C. Hale
 DivestCap Management Corp
 660 Madison Avenue, Floor 21
 New York, NY 10021
 Mobile: 617 818 2222
 NY Office: 212 651 9023
charles@divestcap.com

Visit DivestCap at:
www.divestcap.com

Growing Technology Divestitures with Knowledge & Capital

-----Original Message-----

From: Vigder, Avi [mailto:Avi@sagecap.com]
 Sent: Monday, April 19, 2004 1:55 AM
 To: charles@divestcap.com; Golan, Daniel
 Cc: Bruce Hill
 Subject: RE: Summit Transaction and GP Ownership Distribution to Cavallo

I would like to do the final reconciliation once we have decided how much and what price are we buying stock from the employees. I am in Tokyo this week but lets talk and decide what to do with there. I'll call you on Monday.

-----Original Message-----

From: charles@divestcap.com [mailto:charles@divestcap.com]
 Sent: Mon 4/19/2004 12:13 AM
 To: Golan, Daniel
 Cc: Vigder, Avi; Bruce Hill
 Subject: RE: Summit Transaction and GP Ownership Distribution to Cavallo

Can I get a commitment to get this reconciliation done early this week?

With thanks,
 C

-----Original Message-----

From: Golan, Daniel [mailto:Daniel@sagecap.com]
 Sent: Friday, April 16, 2004 8:43 AM
 To: charles@divestcap.com
 Subject: RE: Summit Transaction and GP Ownership Distribution to Cavallo

Got it

From: charles@divestcap.com (mailto:charles@divestcap.com)
Sent: Thursday, April 15, 2004 5:50 PM
To: Golan, Daniel
Cc: Vigder, Avi; bruce@divestcap.com
Subject: Summit Transaction and GP Ownership Distribution to Cavallo

Denny,

To finish on the Summit / BSL deal, we need to take care of some housekeeping, and wish to tackle this in the next week so we can actually pay ourselves.

Avi proposed:

- a. Avi gets 35% of the Management Co carried interest (called LMC I)
- b. Carried interest is increased 5% to 25% once the IRR exceeds 25% in the investment
- c. LMC portion is calculated on the total return from the transaction of \$11.85 million
- d. CCH and BGH effective portion is 65% of 25% for subsequent returns (16.25%)
- e. Sighfide has another 5% carried interest increase to 30% once the IRR exceeds 100%.

Five. To execute on this structure, we believe you need for:

1. Wire more money into SDI Holdings LP to make the management company's carried interest align with the above formula.
 - a. Assuming gross profits were \$11.65mm and net profits \$11.4mm, the carry calc at the above formula comes to \$12,808,888.
 - b. SDI Holdings LP currently has \$1,782,209.87. Therefore, you would need to wire in an additional \$1,026,748.13. We made the initial distribution out of SDI Holdings as debt, so this transaction should be no problem.
 - c. Our deal expenses were (i) legal \$16,822.98 (for the SPA work and legal / tax for SDI entity formation), and (ii) \$4,485 for the 2 day turnaround on the EastPoint design and website. We had given an estimate of \$25,000 between these two items, and, as you can see, ended up almost right on that. Assuming you baked our \$25k into the gross, you would have to send additional money for this full amount: \$24,387.
2. SDI Holdings distributes the carried interest of \$12,808,888 in relationship to the 65%-35% split of profits. Therefore, approx. \$833,136 gets wired out to Cavallo by us with the following adjustments:
 - a. Management company expenses were minimal but would need to be deducted prior to the 65-35% split. We can discuss them item by item and you can approve them if you like. The only major one was a GEO headhunter fee Summit will reimburse the management company for, and hence will be an info that will accrue at that same ratio to Cavallo upon payback.
 - b. The management company would also pay back the \$300k debt owed to Cavallo prior to the 65-35% calculation since it was the mgmt co that took the loan. The net financial effect is that we would be wiring an additional \$195k for repayment of debt.

I am sending this on read receipt because our email has been having problems today.

Charles and Bruce

Charles C. Hite
DivestCap Management Corp.
660 Madison Avenue, Floor 21

New York, NY 10021
Mobile: 517 818 7222
NY Office: 212 651 9023
charles@divestcap.com

Visit DivestCap at:
www.divestcap.com

Growing Technology Divestitures with Knowledge & Capital

DivestCap

From: charles@divestcap.com
 Sent: Tuesday, April 20, 2004 2:54 PM
 To: Bruce Hill; Gal, Eldad; Sagi, Mor; Vigdor, Avi
 Subject: Earn Out
 Attachments: image001.jpg

Follow Up Flag: Follow up
 Flag Status: Flagged

Subject to Attorney Client Privilege

Here's the earn-out language for each constituent whom we owe an earn-out.

TO BANKRUPTCY ESTATE
Language

(ix) Additional consideration equal to ten percent (10%) of the post-tax cash flow of the Assets of the Company acquired by Purchaser, after return of the Purchase Price, any invested capital in the Company and after an internal rate of return of five percent (5%), during the period beginning on the end of the first full calendar month following the Closing and ending on the second anniversary of that date. Such amounts will be payable within forty-five (45) days following each of the first and second anniversaries of such month end.

Note: confirmation of this language is also in the cross receipt/bill of sale.

Comments

- To my knowledge, the purchase price has not been returned to Oldpoint International
- Moreover, all capital generated currently remains invested in the company with the exception of capital distributed from the SightLine Systems distributorship in the United States. This capital is roughly \$120,000, I think - below the earn-out threshold. Moreover, this entity does not actually belong to the assets acquired - it is a distributorship.
- Cash flow not defined

TO DEEPHAVEN

Language -

In consideration of the payment of \$100,000.00 from DivestCap or its assignee, the receipt and sufficiency of which is hereby acknowledged, the Investors hereby sell, assign, convey and otherwise transfer to DivestCap or its assignee any and all interests or claims either of them may have against FORTIL, Inc., a California corporation (the "Debtor"), including, without limitation, a) any claim arising under the Securities Purchase Agreement, dated as of July 18, 2000, as the same may have been amended from time to time (hereafter, including the amendment of November 6, 2000 (the "Purchase Agreement"), b) any claim for liquidated damages arising under or relating to the Purchase Agreement or the transactions contemplated thereby, and c) any claim for fees, costs or expenses arising from any such transaction or any proceedings arising from or relating to any such transaction.

Language - in Fax

- Consideration:
- US\$100,000.00 cash plus five percent (5%) of DivestCap's distributed profits after DivestCap shall have received:
 - o Any invested capital in the assets of the Company
 - o An amount equal to 15% on such invested capital

Comments

- Note: Bill of Sale does not mention the royalty

- Looks pretty clear to me that we're not obligated to pay until DivestCap or its assignee takes profits. DivestCap hasn't taken any profits. Arguably, the intent of the language was broader though – it meant any profits we as investors distribute. I can't speak to Oldpoint but believe all capital generated currently remains invested in the company with the exception of capital distributed from the Sightline Systems distributorship in the United States. However, this entity does not actually belong to the assets acquired – it is a distributorship. So, it's ambiguous still. Profits in the distributorship, tax-wise, were 120k, for a royalty of 25k. If we were to count personal comp paid as carried interest profit, the number would be closer to \$20k royalty.

Thoughts? Obviously, BSL involvement would change things quite a bit.

Charlie

Charles C. Hale
DivestCap Management Corp
660 Madison Avenue, Floor 21
New York, NY 10021
Mobile: 617 818 2222
NY Office: 212 651 9823
charles@divestcap.com

Visit DivestCap at:
www.divestcap.com

Growing Technology Divestitures with Knowledge & Capital

divestcap

From: Sagi, Mor
Sent: Monday, May 03, 2004 8:41 AM
To: Vigder, Avi; Shlomo, Melchor
Subject: FW: Materials

Follow Up Flag: Follow up
Flag Status: Flagged

FYI, please talk with Bruce and Charlie and provide them with the info that they need, so we can move forward.
Thanks,
Mor

-----Original Message-----

From: Bruce Hill [mailto:bruce@divestcap.com]
Sent: Mon 5/3/2004 8:55 AM
To: Sagi, Mor; charlie@divestcap.com
Cc:
Subject: RE: Materials

Mor,

As Charlie said, we need the April numbers from Shlomo for GEL. He is sending the GEL corporate material that we requested. However, the due diligence list from BSL includes significant information about Sage and GCI (director identities, etc.) that we just do not have.

We also need to have a call with Avi/Shlomo to make sure that they are comfortable with the tax approach we are taking - then we can send the document to BSL.

I suggest that you, Charlie and I have a call to go over the BSL diligence list this evening to make sure that we all agree who is doing what.

When will you be available.

Bruce

-----Original Message-----

From: Sagi, Mor [mailto:Mor@divestcap.com]
Sent: Monday, May 03, 2004 2:38 AM
To: charlie@divestcap.com; bruce@divestcap.com
Subject: Materials

Hi guys,

How are we doing on the preparation of materials for BSL? What's the status? What do we still owe them? Please let me know if I can help you with Shlomo or anything else. We do not have much time.

Thanks,

Mor

divestcap

From: Bruce Hill [bruce@divestcap.com]
Sent: Monday, May 03, 2004 9:47 PM
To: 'Shlomo Melchor'; Vigdet, Avi
Cc: charles@divestcap.com; Bagi, Mor
Subject: SightLine-BSL Tax Structure Call

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Shlomo/Avi

Can we have a call tomorrow to discuss and finalize the tax structure of SightLine post-BSL? I think we have a structure that works but I want to clear this all with you tomorrow so we can propose it to BSL. I would suggest 9:00 a.m. our time, 4 p.m. your time? If that works, I will call Avi's office at that time.

Bruce

divestcap

From: Bruce Hill [bruce@solsticebg.com]
Sent: Saturday, May 29, 2008 7:47 PM
To: Vigdor, Avi
Subject: Your message

Follow Up Flag: Follow up
Flag Status: Flagged

Avi,

I got your message last night – it must have been very late for you. I'm sorry I missed your call. Thanks very much for your support – I appreciate it very much. I can certainly talk to you any time you want on Monday or any other time next week. Please don't disturb the last days of your holiday. Unfortunately, this experience is much more of a marathon than a sprint.

As I'm sure Charlie told you, we have a lot of very interesting opportunities right now. I think it should be a good summer.

Thanks again,

Bruce

divestcap

From: charles@divestcap.com
 Sent: Monday, June 14, 2004 11:44 PM
 To: Vigger, Avi
 Cc: bruce@divestcap.com
 Subject: FW:

Follow Up Flag: Follow up
 Flag Status: Flagged

Avi - I am taking your advice from our lunch a few weeks ago. Specifically, I am looking for a sr deal person. Bruce agrees too. We are also working the banks harder for bigger deals. Fred (emailed below) runs all tech for Cowen. Let me know if I'm revealing too much on our exit abilities.

Charlie

-----Original Message-----

From: charles@divestcap.com [mailto:charles@divestcap.com]
 Sent: Monday, June 14, 2004 10:59 PM
 To: 'fred.joseph@sgcowen.com'
 Subject: RE:

Fred - sorry for my late response. We've been incredibly busy, in part because leverage is picking up. For one of our deals, RBO5 just came in on a deal at a preliminary 3x Sr and 1.75x mezz with the mezz at 12% + 2% PIK - very aggressive.

I think I told you in Philly that we were focused on sub-Golden Gate deals.
 I was wrong - we're well under way on a couple of large ones (> \$30-50mm equity).

Especially with our spike in deal size, we really need to hire someone very senior. I wonder if you would have time to discuss if you know of anyone.
 I'm looking for a senior tech exec who has done a lot of M&A (and not produced P&G-like results). My role model is Larry Lenihan at Pequot who managed to hire Jerry Poch, the person who took AmeriData from a small size to \$130m in revs before selling to GE, and who has made many spectacular investments while helping grow the firm.

Also, largely because we have a unique (insofar as I know) ability gain partial liquidity events for big deals in certain world equity markets at very high valuations, just as we did with Summit as our trial, we would like to be a lot more proactive and aggressive on the buy-side. Perhaps we could see what ideas your sponsor coverage group (or you) might have for divestitures. We need cash flow positive businesses, generally, for which we can pay decent prices, or the extreme opposite, which has been our DivestCap "classic value" deal.

Hoping to catch up soon, and apologies for my delinquent response.

Charlie

Charles C. Hale
 Mobile: 617 848 2222
 NY Office: 212 651 9023
charles@divestcap.com

-----Original Message-----

From: fred.joseph@sgcowaen.com [mailto:fred.joseph@sgcowaen.com]
Sent: Friday, May 07, 2004 5:12 PM
To: charles@divestcap.com
Subject:

Hi Charlie,
sorry that it has taken so long to get back in touch, but here it is.
Hope business is good and look forward to speaking with you soon.
Fred

This message and any attachments (the "message") are confidential and intended solely for the
addressee.
Any unauthorized use or dissemination is prohibited.
E-mails are susceptible to alteration.
Neither SOCIETE GENERALE nor any of its subsidiaries or affiliates shall be liable for the
message if altered, changed or falsified.

divestcap

From: charles@divestcap.com
 Sent: Tuesday, June 15, 2004 12:29 AM
 To: Vigdor, Avi
 Cc: Bruce Hill; Michelle Yi (E-mail); Gal, Eldad; Sagi, Mor
 Subject: RE: Kenan Systems

Follow Up Flag: Follow up
 Flag Status: Flagged

Bought for \$280mm in 2002. CSGS may position higher but would probably let it go for what they paid for it.

It's roughly fairly valued -- on a comp basis, \$40mm of high profile license worth \$120mm, \$60mm of maint worth \$180mm, and 70mm of svc worth \$40mm.

Charles C. Hale
 Mobile: 617 818 2222
 NY Office: 212 651 5023
charles@divestcap.com

-----Original Message-----

From: Vigdor, Avi [<mailto:Avi@divestcap.com>]
 Sent: Tuesday, June 15, 2004 12:17 AM
 To: charles@divestcap.com
 Cc: Bruce Hill; Michelle Yi (E-mail); Gal, Eldad; Sagi, Mor
 Subject: RE: Kenan Systems

what is the expected price?

-----Original Message-----

From: charles@divestcap.com [<mailto:charles@divestcap.com>]
 Sent: Mon 6/14/2004 7:10 PM
 To: Vigdor, Avi
 Cc: Bruce Hill; Michelle Yi (E-mail); Gal, Eldad; Sagi, Mor
 Subject: Kenan Systems

Avi --

Michelle has been pursuing CSG Systems (Symb CSGS) for a while. We are under NDA with them. They have a division called Kenan they bought for \$280mm from Lucent in 2002. Revs are somewhere between \$180mm and \$190mm. CSGS may position higher but would probably let it go for what they paid for it.

The business has 230 customers. 75% of its revenues were generated outside the U.S. It is EBITDA break even, although (i) \$10mm alone is wasted on frivolous R&D, and a service business is masking a highly profitable billing business (over \$20mm in maintenance). Companies like AT&T Wireless, BellSouth, and Singapore Telecom use Kenan for its billing software (billing mediation, real-time rating engine, revenue settlement solutions, etc). HIGHLY mission critical and embedded. Written entirely in COBOL. Needless to say, we know how to get businesses like this to more appropriate EBITDA margins.

Could we find a Japanese single here? The question marks are (i) whether we could manage Kenan to get the cash flow we'd need to get a lift on the Japanese markets, (ii) what CSG would require with their stock being so overpriced, and (iii) whether we could get any material leverage -- probably tough with the no substantial trailing EBITDA.

Thoughts?

Charlie

Charles C. Hale
DivestCap Management Corp
660 Madison Avenue, Floor 21
New York, NY 10021
Mobile: 617 818 2222
NY Office: 212 651 9023
charles@divestcap.com

Visit DivestCap at:
www.divestcap.com

Growing Technology Divestitures with Knowledge & Capital

divestcap

From: Hale, Charles [charles@divestcap.com]
 Sent: Tuesday, August 17, 2004 1:52 PM
 To: Steinhilber, Raz
 Cc: Hui, Bruce; Yi, Michelle; Vigder, Avi
 Subject: RE: McNutt & Litteneker
 Attachments: CrescentAppointment.pdf

Follow Up Flag: Follow up
 Flag Status: Flagged

Working on getting more info. Will send as soon as I get it.

Any leads on the creditors' committee? This list shows the creditors with their contact detail. I just called Citizens Watch and Media Solutions to put a good word in for McNutt.

I also called BofA Levered Finance to figure out whose credit this is in the workout group. Should have some intel soon and will then call that person -- high level intro call only since we don't know the power spot in the cap structure yet.

Charlie

Charles C. Hale
 Mobile: 617 818 2222
 NY Office: 212 651 9323
 charles@divestcap.com

From: Raz Steinhilber (Cavallo) [mailto:raz@cavallio.com]
 Sent: Tuesday, August 17, 2004 2:26 PM
 To: Hale, Charles
 Subject: Re: McNutt & Litteneker

send me more on the jewelry chain

— Original Message —

From: Hale, Charles
 To: Vigder, Avi; Steinhilber, Raz
 Cc: hui@divestcap.com; michelle@divestcap.com
 Sent: Tuesday, August 17, 2004 6:17 AM
 Subject: McNutt & Litteneker

McNutt & Litteneker is the California bankruptcy counsel that represented us for FORTIL (Sigffline). They are excellent.

They have 2 deals for us and something I thought we might be able to help them on.

First, the help:

Crescent Jewelers just filed for Chapter 11. The Creditors Committee consists of ~7 wholesale jewelers. McNutt wants to represent the Creditors Committee. I faxed the list to Geta, along with collateral on the firm. Of the circled names, are there any you (a) know, and (b) would feel comfortable calling and recommending McNutt? If yes, great, we should be doing favors for these guys. If not, thanks for considering.

Second, the deals. There are a couple I want to mention briefly, both from McNutt.

1. Chevy's is a California restaurant chain with \$18mm in EBITDA, and stable. McNutt thinks we have a window to prevail as a stalking horse at approx. 3 times EBITDA. If he's right, we ought to be able to recap at 3 times (eg zero equity). Maybe too good to be true, maybe not. Anyway, he's got a good management team lined up, and we as a group should take a look. I am having a call with the possible management team tomorrow.

2. Very confidential IP buyout from the @Home bankruptcy. We're moving ahead with McNutt on buying out the IP portfolio they have been managing for the @Home bankruptcy. McNutt knows this portfolio cold, the estate has to be liquidated, McNutt has done a tremendous amount of discovery work on it at estate expense, and we have a model that increases margin of safety by having the IP law firms take their fees in a pre-capped class of equity. The patents are mostly search, I think. This is a wild card, high-potential transaction. Very early stage.

Agfa and all other deals still in process except our unsolicited Aetna Transportation Software bid, which won't go anywhere as of this morning. The rival definitive was too tight and, using their new fund, Platinum paid a price we wouldn't want to match. At least we forced them to pay a lot without expending material effort or time.

Charlie

CHEVY'S NOTES:

Overview

- Owned by Pepisco. Spun out into JW Childs. Sucked money out of it keeping debt. Deal he had to sell it collapsed. Filed.
- Cash positive before debt service and always has been
- Operating in Ch 11 for 10 months
- 18mm EBITDA
- Revenue unknown

McNutt interested because:

- Very fouled up. Languishing.
- attorney and prof fees 3.5mm
- main debt
 - o RBoS - \$45mm sr.
 - Were going to be DIP leader but FootHill and AbleCo undercut on pricing with huge fee
 - -> Primed RBoS
 - o DIP is \$20mm, \$15mm drawn.
 - o \$50mm unsecured.
 - 50% owed to Childs - possibly subject to equitable subordination

To put deal together:

- Senior debt will probably take some sort of haircut -- 5 or 10 cents off the top
- \$45mm + FootHill
- Needs to be enough money to have \$15mm in operating capital
- 10 cents on dollar for unsecured, or \$5mm
- TOTAL: \$55mm lowest possible acquisition price

Parties in play

- Sun Capital has surfaced as likely stalking horse bidder
- Competing reorg plan

Team Mc Nott

- Fred Selinger - with small investment banking firm called Sutter Securities. Restaurant Co turnaround CEO. Trying to be separated from Sutter for this deal because Sutter is registered broker / dealer
- Chuck Frank - owned major national restaurant chain. Now CEO of McGregor Golf
- Have identified senior management team

What is Chevy's and is it a falling knife?

- Chevy's - expensive Mexican food for white people. People who Scott trusts believe it is not a falling knife. Still makes money
- Neglected for a year

Plan

- bc stalking horse, negotiate with RBOS, Football
- have call with Operators

divestcap

From: H&B, Bruce [Bruce@divestcap.com]
Sent: Tuesday, November 02, 2004 8:14 PM
To: Hale, Charles; Scott H. McNitt; Rebecca U. Litteneker; Bethany N. Marshall
Cc: H&B, Bruce; Yi, Michelle; Vigder, Avi; Gal, Elad
Subject: RE: Datatec

Follow Up Flag: Follow up
Flag Status: Flagged

Just a few supplementary points.

The company is basically out of cash. Therefore, the advisors have told us that speed and certainty of closure is more important than value.

The issue with the Palladin security at the holding company level is that the A/R in which they are secured is held there, but the actual services that gave rise to the A/R appear to have been performed by the subs. I would think that there is some danger that the court would therefore put the A/R back down to the operating co. level and make it subject to the IBM security interest.

The workforce in the field is unionized. The advisors say this contract can be rejected in bankruptcy. Is that true?

Bruce

From: Hale, Charles
Sent: Tuesday, November 02, 2004 8:17 PM
To: Scott H. McNitt; Rebecca U. Litteneker; Bethany N. Marshall
Cc: H&B, Bruce; Yi, Michelle; Vigder, Avi; Gal, Elad
Subject: Datatec

We have a FRTL-like situation. Strong time sensitivity.

CREDITORS

Palladin - 4m face debt secured at holding co.

- Probably jr to IBM b/c holding co security.
- Asking 50 cents on dollar because position is that AR is at holding company level and they can therefore be sr to IBM. Specious (?)
- From a PIPE
- Would probably accept a \$1mm purchase price

IBM: 30m face value debt

- Warr = 13 cents on dollar. Would probably sell for \$2.4mm
- Probably senior. Secured against op co. Investigating
- Tentatively agreed with Palladin to a \$4mm IBM / \$2mm Palladin / \$4mm DIP if someone were to pay \$10mm.

VALUE OF COMPANY

- In liquidation: \$2mm
- As going concern: much more
- Risk of liquidation: High. Company out of cash.

OUR POTENTIAL STRATEGY

- Depends on relative seniority of IBM vs Palladin

IBM as essentially a stalking horse; we'll pay \$1.8[mn]. If someone overbids by x, you can
 offer if we get our expenses and a fee covered
 res IBM a floor
 n lock them up.
 Palladin: offer \$1.8mn if we win. This may be a de facto blocking position because would
 the process and company is out of cash

AS
 work
 n Smaller - BK advisors
 cash.
 s a "wire puller" - low end even.

closure is more

it started 10min ago thru 7:15pm. Bruce - please add or amend at will...

ed is held there,
 ink that there is
 it subject to the

nt Corp
 Floor 21

: that true?

123
 78

at:
 com

ogy Divestitures with Knowledge & Capital

they can

cone were to pay

divestcap

From: Hill, Bruce [Bruce@divestcap.com]
 Sent: Tuesday, November 02, 2004 8:14 PM
 To: Hale, Charles; Scott H. McNitt; Rebecca U. Lilieneker; Bethany N. Marshall
 Cc: Hill, Bruce; Yi, Michelle; Vigder, Avi; Gal, Eldad
 Subject: RE: Databac

Follow Up Flag: Follow up
 Flag Status: Flagged

Just a few supplementary points.

The company is basically out of cash. Therefore, the advisors have told us that speed and certainty of closure is more important than value.

The issue with the Palladin security at the holding company level is that the AR in which they are secured is held there, but the actual services that gave rise to the AR appear to have been performed by the subs. I would think that there is some danger that the court would therefore pull the AR back down to the operating co. level and make it subject to the IBM security interest.

The workforce in the field is unionized. The advisors say this contract can be rejected in bankruptcy. Is that true?

Bruce

From: Hale, Charles
 Sent: Tuesday, November 02, 2004 8:17 PM
 To: Scott H. McNitt; Rebecca U. Lilieneker; Bethany N. Marshall
 Cc: Hill, Bruce; Yi, Michelle; Vigder, Avi; Gal, Eldad
 Subject: Databac

We have a FRTL like situation. Strong time sensitivity.

CREDITORS

Palladin = 4m face debt secured at holding co.

- Probably jr to IBM b/c holding co security.
- Asking 50 cents on dollar because position is that AR is at holding company level and they can therefore be sr to IBM. Specious (?)
- From a PIPE
- Would probably accept a \$1mm purchase price

IBM: 30m face value debt

- Want = 13 cents on dollar. Would probably sell for \$2.4mm
- Probably senior. Secured against op co. Investigating
- Tentatively agreed with Palladin to a \$4mm IBM / \$2mm Palladin / \$4mm DXP if someone were to pay \$10mm.

VALUE OF COMPANY

- In liquidation: \$2mm
- As going concern: much more
- Risk of liquidation: High. Company out of cash.

OUR POTENTIAL STRATEGY

- Depends on relative seniority of IBM vs Palladin